Exhibit 4

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Marinelly Maldonado, Field Attorney
National Labor Relations Board, Region 12
51 SW 1st Avenue, Suite 1320
Miami, Florida 33130-1623

Re: American Sales & Management Organization, LLC (d/b/a Eulen America)
Case No. 12-CA-163435
(4231 ANB File No. 16(T))

Dear Ms. Maldonado:

The undersigned represents the Respondent, American Sales & Management Organization, LLC, d/b/a Eulen America ("Eulen America"), with respect to the charge filed by the Service Employees International Union, Local 32BJ. The purpose of this letter is to respond to the charge on behalf of Eulen America.[1]

The Union's allegations that Eulen America's Mandatory Arbitration Agreement and Class Action Waiver constitutes an unfair labor practice and that a Eulen America supervisor told employees that they could not speak to Union representatives should be dismissed for

[1]This statement is intended to be Eulen America's summary response to the allegations raised in the above-referenced charge. It is not intended to be an exhaustive treatment of any and all evidence that may be available to Eulen America at the time this statement was prepared, and it should not be interpreted to signify that Eulen America has completed all investigations it may wish to pursue in this matter. Further, this statement is not intended to raise all legal theories and/or defenses which Eulen America may ultimately raise in this matter. Eulen America reserves the right to alter, amend, or supplement this statement if new or additional information is alleged or discovered or for other reasons. This statement is provided to the National Labor Relations Board solely for its investigation of the above-referenced charge, and with the understanding that this matter will remain confidential and will not be disclosed for any other purpose, except as authorized by applicable law.

several reasons. First, Eulen America contends that the Board is without jurisdiction in this matter as Eulen America is a derivative air carrier subject to the Railway Labor Act.[2] Second, Eulen America's Arbitration Agreement does not constitute an unfair labor practice and is valid under the case law of numerous Circuit Courts of Appeal, including the Eleventh Circuit Court of Appeals. And lastly, none of Eulen America's supervisory personnel informed employees that they could not speak with Union representatives.

I. FACTUAL BACKGROUND

Eulen America provides aviation support services to various airlines at a number of domestic airports, including at Miami International Airport ("MIA"). Eulen America employs approximately 2,000 people who are stationed at airports to provide various aviation support services to air carriers and their passengers, pursuant to contracts with commercial air carriers. These services include, among other things, sky capping services, services assisting handicapped passengers, baggage loading and unloading on aircraft, and aircraft cabin cleaning services.

At the inception of their employment, all employees of Eulen America sign the Arbitration Agreement. See Exhibit One attached hereto. The Arbitration Agreement provides that both Eulen America and the employee "mutually agree that any and all claims, controversies, and disputes between them regarding Employee's employment with the Company or the termination of Employee's employment with the Company must be submitted for resolution by binding arbitration …" The Arbitration Agreement prohibits class and collective actions.[3] In addition, the Arbitration Agreement specifically states that "nothing in this Agreement shall preclude Employee from filing complaints or charges with any governmental agency, including without limitation charges filed with the National Labor Relations Board, the Equal Employment Opportunity Commission, and the United States Department of Labor." Thus, pursuant to the Arbitration Agreement, employees are still free to pursue administrative remedies by filing complaints or charges with governmental agencies, including the Board.

II. LEGAL DISCUSSION

The charge in this matter asserts that by requiring employees to sign the Arbitration Agreement, Eulen America has violated employees' Section 7 rights under the NLRA. Additionally, the charge also asserts that Eulen America violated Section 8(a)(3) of the NLRA by allegedly informing employees that they could not speak with Union representatives. For the

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[2] Eulen America re-asserts its position that the Board is without jurisdiction in this matter, as previously submitted to the Board in its original response dated February 5, 2016.

[3] The Arbitration Agreement states, "However, the company does not consent, and employee shall have no right or authority, to have any dispute arbitrated as a class or collective action, nor shall employee have any rights or authority to join any such action. Further, the arbitrator shall have no right to certify, consolidate, or collectively arbitrate multiple independent claims."

reasons that follow, the Union's allegations in these regards lack merit, and the charge should be dismissed.

A. The charge should be dismissed as the Arbitration Agreement is valid under the current case law of numerous Circuit Courts of Appeals, including the Eleventh Circuit Court of Appeals.

While Eulen America is aware that the Board takes the position that arbitration agreements with class-action waivers are invalid under the NLRA,[4] numerous Circuit Courts of Appeals have disagreed with this view. Indeed, the Fifth Circuit reversed the Board's decision in *D.R. Horton*.[5] In doing so, the Fifth Circuit expressly held that an arbitration agreement that contains a waiver of class action rights is enforceable.[6]

Additionally, the Fifth Circuit held in *Murphy Oil* that it is not an unfair labor practice to require employees to sign arbitration agreements that contain class action waivers.[7] Reiterating the views it expressed in *D.R. Horton*, the court stated that an arbitration agreement that an employee would "reasonably construe . . . as prohibiting filing unfair labor practice charges with the board" would violate the NLRA.[8] However, the court made clear that although an express statement to the contrary was not necessary to make the agreement enforceable, such a provision would be helpful if the agreement contained confusing language in that regard. The court held that the agreement that explicitly allowed employees to file administrative charges with the Board did not violate the employees' rights under the NLRA and was thus enforceable. Moreover, although the court explicitly stated that the Board is not bound to follow its decisions, the court did caution that the Board "might want to strike a more respectful balance between its views and those of circuit courts in reviewing its orders."[9]

Indeed, four other Circuit Courts of Appeal have found that employees may lawfully waive their collective action rights in arbitration agreements. In *Sutherland*, the Second Circuit found such an agreement to be enforceable.[10] Likewise, in *Owen*, the Eighth Circuit expressly rejected the Board's rationale in *D.R. Horton*.[11] In so doing, the Eighth Circuit found that the fact that the arbitration agreement did not preclude employees from filing complaints with administrative agencies, such as the Board, weighed in favor of the agreement's enforceability.[12]

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[4] *D.R. Horton*, 357 NLRB No. 184 (2012).
[5] *D.R. Horton v. N.L.R.B.*, 737 F.3d 344, 362 (5th Cir. 2013).
[6] *Id.*
[7] *Murphy Oil USA, Inc. v. N.L.R.B.*, 2015 WL 6457613 at *3 (5th Cir. Oct. 26, 2015).
[8] *Id.* at *4.
[9] *Id.* at *6.
[10] *Sutherland v. Ernst & Young. LLP*, 726 F.3d 290, 299 (2d Cir. 2013).
[11] *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1051 (8th Cir. 2013).
[12] *Id.* at 1053.

The Fourth Circuit and the Eleventh Circuit, which issues controlling precedent for employers operating in Florida, have similarly held that such agreements are enforceable.[13]

As set forth more fully above, the Arbitration Agreement at issue here provides that the employee and Eulen America agree to arbitration, that the employee agrees to waive his or her rights to a class or collective action, and that an employee is not precluded from filing administrative charges or complaints. The Arbitration Agreement is similar to the agreements that the various Circuit Courts have reviewed and upheld, despite the Board's view to the contrary. Consequently, this allegation is without merit and should be dismissed.

B. The charge should be dismissed as neither Eulen America, nor its supervisory personnel, ever informed employees that they could not speak with Union representatives during non-working time.

Regarding the Union's assertion that a Eulen America supervisor, Alexis Hernandez, stated that employees could not organize or speak with Union representatives, this allegation is wholly without merit. Rather, neither Eulen America nor its supervisory personnel (Hernandez included) have ever informed employees that they are not permitted to organize or speak with the Union during non-working time.

C. Request for Clarification Concerning Allegation Involving Discharge of Freddy Gonzalez

By email dated February 18, 2016, you requested additional clarification regarding the discharge of Freddy Gonzalez.[14] Specifically, you have requested that we identify the individual who advised Gonzalez of Eulen America's expectations regarding attendance and punctuality when he was rehired in 2015 and who notified him that he would be required to serve an initial probationary period, just like all other employees.[15]

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[13] *See Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 506 (4th Cir. 2002) (enforcing an arbitration agreement that specifically excluded administrative claims); *See Walthour v. Chipio Windshield Repair, LLC*, 745 F.3d 1326 (11th Cir. 2013) (finding an arbitration agreement that contained a waiver of class and collective-action rights to be valid).

[14] We previously responded to the allegation involving Gonzalez's discharge in our letter of February 5, 2016.

[15] You have also requested the names and complete personnel files of all individuals who separated from Eulen America's Miami location in the relevant period. As you know, we previously provided a report that listed all such employees by employee number, date of hire, date of separation and termination reason. Notably, this list numbers over 500 individuals. As such, Eulen America declines to produce the names and complete personnel files of all separated employees. Notwithstanding, a review of the previously-provided list clearly establishes that Eulen America regularly disciplines, up to discharge, employees with attendance and punctuality deficiencies, as well as for similar reasons.

Please be advised that this information would have been relayed to Gonzalez during his new hire orientation at the time he was required to complete his new hire paperwork. The orientation meeting is conducted by HR Representative Thaimy Diaz. Indeed, as reflected in Exhibit 2 attached to our February 5 position statement, at the time of his hiring in 2015, Gonzalez specifically completed Eulen America's "Attendance Policy" form which further relayed to him Eulen America's expectations regarding punctuality and attendance.

III. CONCLUSION

In view of the foregoing, we submit that the unfair labor practice charge is without merit and should be dismissed.

If you have any additional questions, please contact me.

Sincerely,

for

Brian Koji

Enclosure
Exhibit One: Mandatory Arbitration Agreement and Class Action Waiver